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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARVIN WASHINGTON; DEAN :
BORTELL, as Parent of Infant ALEXIS :
BORTELL; JOSE BELEN; SEBASTIEN :
COTTE, as Parent of Infant JAGGER :
COTTE; and CANNABIS CULTURAL :
ASSOCIATION, INC., :
:
:
Plaintiffs, :

- against -

JEFFERSON BEAUREGARD SESSIONS, :
III, in his official capacity as United States :
Attorney General; UNITED STATES :
DEPARTMENT OF JUSTICE; CHARLES :
“CHUCK” ROSENBERG, in his official :
capacity as the Acting Director of the Drug :
Enforcement Administration; UNITED :
STATES DRUG ENFORCEMENT :
ADMINISTRATION; and the :
UNITED STATES OF AMERICA, :
:
Defendants. :

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**DECLARATION OF MICHAEL S.
HILLER IN OPPOSITION TO
DEFENDANTS’ MOTION TO DISMISS**

17 Civ. 5625

MICHAEL S. HILLER, an attorney admitted to the practice of law before the Courts of the State of New York, as well as the United States District Court for the Southern District of New York, declares as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the managing principal of Hiller, PC, *pro bono* counsel for Marvin Washington (“Marvin”), Dean Bortell, as Parent of Infant Alexis Bortell, Jose Belen, Sebastien Cotte, as Parent of Infant Jagger Cotte, and the Cannabis Cultural Association, Inc., Plaintiffs in the above-captioned action (collectively, “Plaintiffs”). I submit this Declaration in Opposition to Defendants’ Motion to Dismiss the Amended Complaint. The grounds for Plaintiffs’ Opposition are set forth in the accompanying Memorandum of Law (“Opposition Brief”). The purpose of this Declaration is to briefly address the length of the Opposition Brief and to identify the Exhibits annexed to this Opposition.

Length of the Brief in Opposition

2. We recognize that Plaintiffs’ Memorandum of Law in opposition to Defendants’ Motion to Dismiss (“Opposition Brief”) is lengthy, and defendants may seek to minimize its utility by referencing its length as somehow unwieldy. But the length of the Opposition Brief is largely driven the nature of defendants’ papers. As reflected in the Opposition Brief, defendants, although purporting to assume the facts true pursuant to Fed. R. Civ. P. 12(b)(6), largely ignore the facts recited in the Amended Complaint. As a consequence, it was incumbent upon us to recite the most pertinent allegations of the Amended Complaint -- a process which consumes considerable space in the Opposition Brief. In addition, defendants make a series of arguments without reciting the standards being applied. Accordingly, because we were uncertain, for example, whether defendants were arguing that Plaintiffs’ First Amendment Claim should be governed by strict or intermediate scrutiny (or perhaps rational relation review), it was necessary for us to include far more legal

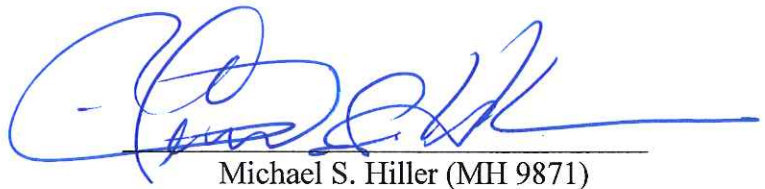
argument than would otherwise be necessary.

Exhibits

3. For the Court's ease of reference, Plaintiffs' Amended Complaint is attached hereto as Exhibit A. The following Exhibits were attached to, and filed with, the Amended Complaint (Docket No. 23):

- Exhibit 1: Quinnipiac Poll, April 20, 2017
- Exhibit 2: Promotional Photograph of the film, "Hemp for Victory"
- Exhibit 3: Article: Adam Edelman, *Nixon Aide: "War on Drugs" was Tool to Target "Black People,"* N.Y. Daily News (Mar. 23, 2016)
- Exhibit 4: Article: Dan Baum, *Legalize it All: How to Win the War on Drugs,* Harper's Magazine (April 2016)
- Exhibit 5: Administrative Law Judge Francis Young Decision, *In the Matter of Marijuana Rescheduling Petition*, DEA Docket No. 86-22 (Sept. 6, 1988)
- Exhibit 6: United States Cannabis Patent Application, Oct. 7, 2003
- Exhibit 7: Memorandum by Deputy Attorney General of the United States David W. Ogden ("Ogden Memorandum"), Oct. 19, 2009
- Exhibit 8: Memorandum by Deputy Attorney General of the United States James M. Cole ("Cole Memorandum"), Aug. 29, 2013
- Exhibit 9: United States Department of Treasury Financial Crimes Enforcement Network Memorandum ("FinCEN Guidance"), Feb. 14, 2014
- Exhibit 10: Americans for Safe Access Foundation's Request for Correction of Information Disseminated by DEA Regarding Marijuana (Cannabis) (Dec. 5, 2016)

Dated: New York, New York
December 1, 2017



Michael S. Hiller (MH 9871)